



## Planning Commission

# TRANSMITTAL

Date: January 21, 2014

TO: Mayor Balducci and Members of the City Council

FROM: Chair Tebelius and Members of the Planning Commission

SUBJECT: Planning Commission Recommendation on Shoreline Master Program Update Conformance Amendments - File No. 11-103228 AD

### INTRODUCTION

On behalf of the Planning Commission, I am pleased to transmit our recommendation on the Shoreline Master Program Update Land Use Code Conformance Amendments. The Planning Commission recommends by a 4-2 vote that the City Council APPROVE the amendments as they are presented in Attachment 1. These amendments are a companion piece to the SMP Update transmitted by the Commission to Council in May 2013, and are intended to ensure that the updated SMP and other provisions of the Land Use Code synchronize in a manner that allows the updated SMP to function as intended. The Planning Commission assumes that these conformance amendments will be put into effect concurrently with the updated SMP, to avoid regulatory gaps that would otherwise result from premature effectiveness of the conformance amendments.

### BACKGROUND

In January 2013 the Planning Commission voted 7-0 to approve its recommended amendments to the City's Shoreline policies and Shoreline Overlay District (Part 20.25E LUC). The Commission's recommendation was transmitted to Council on May 28, 2013. The materials transmitted to Council at that time included:

- Amendments to the Shoreline Element of the Comprehensive Plan (policies);
- Amendments to the Shoreline Overlay District, Part 20.25E LUC (regulations);
- City of Bellevue Shoreline Restoration Plan (guidance);
- Shoreline Environment designations (maps); and
- Shoreline Inventory and Analysis (with link to website).

The Commission recognized at the time that Land Use Code conformance amendments would be needed as part of the entire SMP Update package that would ultimately be submitted to the Washington State Department of Ecology for approval, but waited to undertake such amendments pending further direction from Council.

In July 2013, Council discussed its strategy for moving the SMP Update forward to Ecology for review and approval. Council discussion emphasized three overarching themes:

1. Share information broadly, among the Council, Planning Commission, Department of Ecology, and the public;
2. Move forward expeditiously, to protect the institutional knowledge of the Planning Commission from turnover, adhere to a schedule, and secure additional consultant help if necessary; and
3. Limit the amount of rework/work duplication, while understanding any risks associated with SMP adoption and allowing Council sufficient opportunity to make any changes they feel may be necessary.

More specifically, Council directed staff to, among other tasks, engage the Planning Commission on the conformance amendments to the Land Use Code. Staff prepared the first draft of the conformance amendments and presented them to the Planning Commission in a series of study sessions held in October and November of 2013. Ultimately, the amendments were refined to the point now presented in Attachment 1. These conformance amendments are based on the Draft SMP Update as presented by the Commission to Council, and changes to the SMP Update that Council might undertake could result in the need for further work on the conformance amendments.

In addition to the recommendation on the attached conformance amendments, the Planning Commission requests that the City Council review and consider implementing 2010 state legislation (EHB 1653), which was approved to clarify integration of the Shoreline Management Act policies with the Growth Management Act. Under the current Land Use Code, structures in shoreline jurisdiction may only be modified or redeveloped if done consistent with the terms of the City's SMP and development regulations adopted as part of the 2006 Critical Areas Overlay. If the Council implemented the terms of EHB 1653, structures in shoreline jurisdiction could be modified or redeveloped consistent with the approved SMP, without being required to adhere to the 2006 development regulations adopted to protect critical areas, provided that the proposal will result in no net loss of shoreline ecological functions. Implementation of EHB 1653 could be done as an interim measure, effective until such time as the updated Draft SMP is adopted and in effect. The full text of EHB 1653 is included with this transmittal as Attachment 2.

## **STATE ENVIRONMENTAL POLICY ACT**

On May 5, 2011 a Determination of Non-Significance (DNS) was issued, addressing the Updated Shoreline Master Program (policy amendments and amendments to part

20.25E.LUC - Shoreline Overlay District), and the conformance amendments that would be needed to other parts of the Land Use Code to ensure internal consistency with the updated SMP. The DNS incorporated by reference the Draft and Final Critical Areas Update EIS issued June 2005 and May 2006 respectively.

## **PUBLIC NOTICE, PARTICIPATION, COMMENT, AND RESPONSE**

A Notice of Application for the conformance amendments was published in the Weekly Permit Bulletin on October 17, 2013. A notice of the December 11, 2013 public hearing before the Planning Commission was published in the Weekly Permit Bulletin on November 21, 2013. In addition, a special mailer announcing the public hearing was sent to 1,500 owners of property lying within Bellevue's shoreline jurisdiction. Prior to the public hearing, the Planning Commission held three study sessions on the proposed amendments – October 9, October 23, and November 13, 2013.

The conformance amendments are within the jurisdiction of the East Bellevue Community Council (EBCC). A courtesy hearing was held before the EBCC at its regular meeting on December 3, 2013. Notice of the courtesy hearing was published in the Weekly Permit Bulletin on November 21, 2013 and in the Seattle Times on November 26, 2013. Staff will return to the EBCC for a final hearing and action on the conformance amendments following Council action.

Public testimony was received and considered at each of the three Planning Commission study sessions and the public hearing. The Commission heard testimony from individual affected property owners, as well as from representatives of organizations including the Washington Sensible Shorelines Association, Phantom Lake Homeowner Association, and Save Lake Sammamish. The majority of the testimony addressed the relationship of the Draft SMP to the Critical Areas Overlay (Part 20.25H LUC) and how the two sets of regulations will interrelate upon adoption of the SMP and the conformance amendments. This relationship was particularly important to work through given that, once the SMP is formally updated and adopted, Shoreline regulations will no longer reside in Part 20.25H (Critical Areas Overlay) and shorelines will no longer be regulated, in and of themselves, as critical areas. In response to public input, the proposed conformance amendments recommended by the Planning Commission include minor changes to the critical area regulations (primarily relating to areas of special flood hazard) to ensure that the updated Shoreline policies and regulations will function as intended by the Draft SMP recommended by the Planning Commission and will not result in unintended consequences. Those particular changes appear on pages 16 through 20 of Attachment 1.

## **APPLICABLE DECISION CRITERIA – LAND USE CODE PART 20.30J**

The Planning Commission may recommend, and the City Council may approve or approve with modifications, an amendment to the text of the Land Use Code if:

- A. The amendment is consistent with the Comprehensive Plan; and

The proposed amendments are consistent with the Comprehensive Plan, including the Land Use, Citizen Participation, Economic Development, and Environmental policies identified below:

**LU-1.** Support a diverse community in an open and natural setting comprised of strong residential communities composed of stable neighborhoods with a variety of housing types and densities; a vibrant, robust Downtown which serves as an urban center; other employment and commercial areas; and distinctive community and neighborhood values, the neighborhood's quality of life, the natural environment, and the economy.

**LU-2.** Support the state Growth Management Act by developing and implementing a land use vision that is consistent with the GMA goals, the regional Vision 2020, and the King County Countywide Planning Policies.

**CP-5.** Develop and maintain Land Use Code provisions that define the process and standards relevant to each stage of land use decision making, and educate the public about these processes and standards to promote meaningful citizen participation.

**ED-3.** Develop and maintain regulations that allow for continued economic growth while respecting the environment and quality of life of city neighborhoods.

**ED-4.** Maintain an efficient, timely, predictable and customer-focused permit process, conducted in a manner that integrates multiple city departments into a coordinated entity.

**ED-8.** Recognize and consider the economic and environmental impacts of proposed legislative actions prior to adoption.

**EN-1.** Consider the immediate and long range environmental impacts of policy and regulatory decisions and evaluate those impacts in the context of the city's commitment to provide for public safety, infrastructure, economic development, and a compact Urban Center in a sustainable environment.

**EN-7.** Promote growth management strategies that protect air, water, land, and energy resources consistent with Bellevue's role in the regional plan to contain an Urban Center.

**EN-12.** Recognize critical area function in preparing programs and land use regulations to protect critical areas and to mitigate the lost function due to unavoidable impacts.

**EN-21.** Reduce or eliminate regulatory barriers to protecting and enhancing critical areas.

**EN-29.** Recognize and support the broad benefits and educational value of public access to critical areas and appropriate low-impact uses such as trails.

**EN-38.** Restore and protect the biological health and diversity of the Lake Washington and Lake Sammamish watersheds in Bellevue's jurisdiction.

**EN-40.** Preserve and maintain the 100-year floodplain in a natural and undeveloped state, and restore conditions that have become degraded.

B. The amendment enhances the public health, safety or welfare; and

The proposed amendment serves the public welfare by ensuring consistency and clarity in its land use regulations.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

The proposed amendment is in the best interest of Bellevue citizens and property owners, as it will ensure consistency and clarity in its land use regulations, by resolving conflicts that would otherwise occur internal to the Land Use Code, and by minimizing the confusion and potential interpretation or litigation that can accompany such conflicts. Understandable and consistent land use regulations are in the best interest of the citizens and property owners alike.

## **RECOMMENDATION**

The Planning Commission concludes that the proposed Land Use Code Amendment satisfies the decision criteria contained in LUC 20.30J.135 and recommends that the City Council:

- A. APPROVE the Shoreline Master Program Conformance Amendments as presented in Attachment 1; and
- B. REVIEW AND CONSIDER implementation of EHB 1653 as an interim measure while the updated Shoreline Master Program is being reviewed and approved by the Department of Ecology.

## **ATTACHMENTS**

1. Recommended Conformance Amendments to the Land Use Code
2. Engrossed House Bill 1653